

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2004-011374

11/09/2011

HONORABLE DOUGLAS GERLACH

CLERK OF THE COURT

C. Vigil

Deputy

STATE OF ARIZONA, EX REL, DES
CORI LYNN CRITZER

MELISSA KLEMINSKI BOWER

AND

BRYAN THOMAS STOVALL

ALONA M GOTTFRIED

MINUTE ENTRY

An evidentiary hearing was held in this matter on November 8, 2011. The Court has considered the evidence presented at that hearing by Petitioner/Mother Cori Lynn Critzer and Respondent/Father Bryan Thomas Stovall, including testimonial evidence. Based on that evidence, the Court has concluded that the following findings and rulings are warranted.

Custody Modification.

The purpose of a custody order is “not to gratify the father or mother or to punish either of them, but only for the protection and good of the children.” *Galbraith v. Galbraith*, 88 Ariz. 358, 363, 356 P.2d 1023, 1027 (1960). There must be a showing that circumstances have changed since the original decree (or the last custody order). *Canty v. Canty*, 178 Ariz. 443, 448, 874 P.2d 1000, 1005 (App. 1994).

The child in this matter is the subject of previous custody orders, and therefore, this Court has continuing jurisdiction in such matters. Further, the evidence established that at least one of the parties and their minor child resided in Arizona continuously for at least the six months before the petition to modify was filed. Therefore, this Court has jurisdiction

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regarding custody of the child and parenting time with him because Arizona continues to be the child's home state. A.R.S. § 25-1031.

In support of his request to modify custody and parenting time, Father relied almost exclusively on his own testimony, which to a significant extent, amounted to little more than hyperbole, speculation, and self-serving opinion. Further, persuasive testimonial evidence from the principal of the child's school regarding the manner in which Father has conducted himself at the school and with school representatives was consistent with the demeanor he exhibited throughout much of his testimony, and Father's explanation that such school representatives have conspired with Mother against him was unavailing. At the same time, the evidence also established that Mother, at times, has been unreasonable in fulfilling her role as the parent who was previously awarded sole custody: for example, Mother made no attempt to refute testimony that she failed to include Father on the contact list maintained by the child's day care provider, Mother made no attempt to refute the testimony that she has, at times, refused to allow Father telephone access to the child [see Ex. 8], and Mother made no attempt to refute evidence that, at times, she has denied Father access to the child when she should have permitted it [see e.g., testimony of Officer Butler].

It should be obvious to any reasonable person that the issues here are entirely the result of two parents who do not get along. Regrettably, that means that their child is caught in the cross-fire.

In reaching its decision, the Court has considered all of the factors in A.R.S. §25-403. None of those factors weigh in favor of one parent and against the other, except as noted above and further, as follows:

- (i) Mother has been the child's primary caregiver.
- (ii) The testimony supplied by both the school principal and the representative of Child Protective Services call into question Father's judgment (e.g., Father once left the child unattended in front of a store, and Father's disciplinary measures are at times inappropriate).
- (iii) At the same time, that CPS representative testified that both parents are meeting the child's needs, that the child is safe with both parents, and that Father has been receptive to making changes in his behavior.

It is not apparent from the record why Mother was awarded sole legal custody, but in any event, one may conclude that there has been a substantial and continuing change in circumstances because no evidence suggested that, going forward, Father should be denied the opportunity to participate in decision making affecting his child or that he does not have the

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potential for participating in a constructive way. Nevertheless, as an additional factor, the Court finds that these two parents have demonstrated an inability to work cooperatively and collectively, making the idea of joint parenting little more than a hoped-for ideal that has no reasonable prospect of occurring any time soon.

Based upon the factors explained above that determine what is in the child's best interests in this matter,

THE COURT FINDS that it is in the child's best interest to award joint legal custody to both parents, but that to insure stability in her life (e.g., that she remain in the school where she is being treated so well, and that there be some consistency in her medical care), it is necessary to allow Mother to be the presumptive, or final decision maker (with Mother to comply with the requirements set forth below).

IT IS ORDERED:

1. Cori Lynn Critzer and Bryan Thomas Stovall are awarded joint legal custody of Makenzie Critzer (born 7-17-01).

2. Ms. Critzer (Petitioner) shall have presumptive (or final) decision making authority.

3. The parties are expected to comply with the following Custody Terms:

a. **Parental Access to Records and Information** – Both parents are entitled to have equal access to documents and other information concerning the child's education and physical, mental, moral, and emotional health including medical, school, police, court, and other records directly from the custodian of the records or from the other parent. A parent who does not comply with a reasonable request to provide copies of such records to the other parent shall reimburse the requesting parent for court costs and attorney's fees incurred to force compliance with this requirement. A parent who attempts to restrict the release of documents or information by the custodian, without a court order, is subject to appropriate legal sanctions, such as a fine.

NOTE: Given the testimony regarding the school's policy about providing records to Father, the following procedure shall be implemented. Mother should, in the first instance, provide Father with all school records that she receives (including progress reports, test scores, and notices of school events) within 24 hours after receipt of any such records. If Father wishes to obtain any other records that pertain to the child, he should direct his request to Mother, who should then obtain those records from the school and send them to Father. If Father makes such a request, it must be reasonable (for example, barring some unusual developments, it seems unlikely that Father will need to make such a request more than once a semester, if that, because Mother will be

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providing him with copies of everything that she receives, and further, it should be unlikely that Father will want or need to make a request that requires the copying of a large number of pages).

b. **Educational Arrangements** – Both parents have the right to participate in school conferences, events, and activities (including extra-curricular), and the right to consult with teachers and other school personnel.

c. **Medical and Dental Arrangements** – Both parents have the right to authorize emergency medical/dental treatment, if needed, and the right to consult with physicians and other medical practitioners. Both parents shall advise the other parent immediately of any emergency medical/dental care sought for the child, to cooperate on health matters pertaining to the child, and to keep one another reasonably informed regarding the status of the child's health. Both parents shall keep each other informed as to names, addresses, and telephone numbers of all medical/dental care practitioners.

Except in emergency situations, neither parent shall seek medical or psychological care for a child without first consulting the other. Parents shall inform each other of any non-emergency doctor's appointment, checkup, inoculation, or dental appointment not later than seven days before the appointment. If the appointment is made fewer than seven days in advance, then notice shall be provided to the other parent on the same day that the appointment is made.

d. **Parental Communication** – It is in the child's best interests when the parents communicate regularly about their child and treat one another's opinions, suggestions, and requests with respect. The parents are required to communicate regularly regarding day-to-day and more significant issues that affect the child. The parents shall use e-mail as their primary method for communication because it minimizes disagreements later on about what was and was not said. Both parties shall maintain and regularly review their e-mail accounts. They shall each respond in a timely manner to e-mails received from the other, even if the response is merely to acknowledge the receipt of information and a promise to respond in more detail a short time later. Each should save copies of all e-mails sent and received in some fashion so that copies can be printed later on so that, if there is disagreement in the future about any issue that is the subject of one or more e-mails, each party will have written proof about what was communicated.

If a party does not have access to e-mail at his or her residence, access can be obtained at any public library throughout metropolitan Phoenix by applying for a library card, going online using one of the library's computers, and registering for a free e-mail account (such as Yahoo). A party who does not presently have an e-mail account should make arrangements as quickly as possible, and not later than 21 days after the date of this Minute Entry. Until then, the parties should communicate by telephone.

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e. **Relocation** – Neither parent shall attempt to relocate with the child outside of Maricopa County unless that parent either secures the written consent of the other or obtains a Court order authorizing the move before attempting to relocate.

f. **Mediation or Conciliation Services** – As explained below, Mother is granted presumptive and final decision making authority. Should Father disagree about any decision that must be made for the child that will affect his well-being, he should ask for the assistance of the parenting coordinator whom the Court will appoint by separate Minute Entry. Any motion, petition, memorandum, or other written request that is submitted to the Court in the future regarding child custody, parenting time, or child support that does not show compliance with this requirement will not be considered until the party making the request does comply. It will not be enough for Father to show that what he desires is in the child or children's best interests. Instead, Father must be able to show that what Mother has decided is not in the child or children's best interests.

g. **Deviations** – The parents are free to agree to any temporary deviations from the parenting schedule or other terms of this Decree. If they agree to any permanent modification, which they are also free to do, it will not be enforceable unless it is in writing and signed by both parties. In all events, the parents will cooperate with each other on an ongoing basis to accommodate the schedules of the parents and the child, and the parents are to be reasonably flexible when one of them asks for a temporary modification. If a major change arises, such as moving, remarriage, or health considerations, so that the present schedule is no longer feasible, or the parents are unable to resolve any dispute generally, upon request by either parent, the Court will appoint a parenting coordinator to assist them in overcoming their differences or they may, on their own, ask for the assistance of the Court's Conciliation Services.

h. **Telephone Access** – Both parents shall have reasonable telephone access to the child. The parent placing the call shall be responsible for long-distance charges, if any. The child shall be given privacy during phone calls, and there shall be no interference with phone access. If the child wishes to talk to a parent by using a speaker phone, that will be allowed with the understanding that the parent with whom the child is then staying shall move to another part of the residence so as to be out of the presence of the child and so that the conversation cannot be heard.

i. **Conduct in Presence of the Child** –

i-1. Neither parent shall expose the child to any incidents of domestic violence or extreme or hostile conflict or language. Neither parent shall expose the child to derogatory comments about the other parent or the relatives or friends of the other parent. The parents shall neither argue nor insult each other in the presence of

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the child or allow a third party to do so. Neither parent shall frighten the child by saying things such as the other parent is trying to take her away, the other parent does not love her, want to see her, or is interfering with visits.

i-2. The parents shall not discuss custody, parenting time, or child support issues in the presence of or with the child. The parents shall ensure that the child is not exposed to any discussion about custody disputes or legal proceedings other than to assure the child that the parents are trying to work out appropriate arrangements so that the child can have frequent regular access to both parents.

i-3. The parents shall not question the child about where she wants to live. The parents shall not question the child about the personal life of the other parent. The parents shall not express to the child how angry they are at the other parent, how they doubt the trustworthiness of the other parent, or how hurt or frustrated they are by the actions of the other parent.

i-4. Each parent is restrained from using or permitting others to use the child to convey oral or written messages between households. Communications should take place directly between adult household members, and the child should be protected from involvement in adult issues, such as changes in the parenting time schedule.

i-5. Both parents shall be listed as emergency contacts on any forms that require contact information such as, but not limited to, education, activities, childcare, and medical providers.

i-6. During exchanges, the parties shall make every effort to be polite and respectful to each other. Interaction between the parents shall be restricted to the orderly exchange of the child. The parents are not to use the exchanges of the child or other circumstances in which the child is present to share information with one another, make requests of one another, engage in negotiations, or related activities.

i-7. Neither parent shall do or say anything that might tend to alienate the affection of the child for the other parent, nor shall either parent allow any third person to do so.

i-8. Neither parent shall permit the child to be subjected to corporal punishment of any kind including, but not limited to hitting or striking with an instrument, and/or hitting or striking with a closed fist or open hand. Neither parent

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shall permit the child to be punished by use of anything that could cause injury, bruising, or significant pain.

i-9. Each parent shall encourage love and respect between the child and the other parent. Neither parent shall disparage the other parent or act in a way to hurt the other parent's relationship with the child.

j. **Decision Making Authority** – When questions that affect the child's well being arise, the parents shall address the issues amicably, in good faith, and in a spirit of cooperation that will result in what is best for the child. That means that each parent shall respect the views of the other and consider them as seriously as that parent would want his or her own views considered. If necessary, the parties should seek the opinions of professionals whose opinions may be relevant, such as teachers or medical professionals. If, despite their best, good faith efforts, the parties cannot agree, then Mother will have presumptive decision making authority. That means that, before any such decision is made on behalf of the child, Mother must allow Father to express his views, Mother must consider them carefully and in good faith, and at all times, Mother must show respect to Father (and Father must show respect to Mother). But if, despite that, the parties cannot agree, then Mother may make the decision. If Father continues to disagree, then he should follow the procedures above, asking for the assistance of the parenting coordinator.

Parenting Time.

The Court does not believe it is in the best interests of a school-age child to spend a school week at two different residences. Stability means that the evenings before school should be spent in the same place. No evidence was presented suggesting that a different conclusion is warranted in the circumstances here. At the same time, Father is entitled to an increase in parenting time.

IT IS ORDERED:

1. The parties shall follow the parenting time schedule set forth in the following paragraphs.

a. Except as stated in the following paragraphs, beginning the week before the child's school starts in the Fall, and continuing through the week that the child's school dismisses classes for the Summer, Father may exercise parenting time every other weekend, from Friday after school until Sunday at 5 p.m. At all other times of the year (i.e., the Summer), parenting time will be exercised on a week-on, week-off basis, with Father granted parenting time the first week.

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b. If the child's school observes either a Fall or a Spring Break, or both, of at least five days (including weekends), the parents shall divide the parenting time equally, with Father being permitted to designate which half of the Break(s) when he wishes to exercise parenting time.

c. The parties are instructed to work together to arrive at a satisfactory schedule that produces a reasonable and approximately equal division of holiday parenting time, failing which, they should follow the procedures explained above regarding the parenting coordinator.

2. If, at any time when a parent has parenting time, the child has the opportunity to participate in a school-related, extra-curricular, or other non-family related activity in which she regularly participates, or in such activity in which she wishes to begin participating, it will be that parent's responsibility to make sure that the child is transported to and picked up from the activity. In no circumstances is that parent permitted to use parenting time as a reason or excuse for the child not attending or participating in any such activity. A "school-related, extra-curricular, or other non-family related activity" is an activity that is scheduled by the person or organization that sponsors and conducts the activity and not by either parent.

Contempt.

IT IS ORDERED denying Father's request for a finding of contempt against Mother.

Attorney's Fees.

In various ways, both parties in this matter have been unreasonable. As such, the Court does not believe that it would be appropriate to award attorney's fees to either party on the basis that the other was unreasonable.

IT IS ORDERED denying both parties' requests for attorney's fees.

Final Appealable Order.

IT IS ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81, Arizona Rules of Family Law Procedure.

/ s / HONORABLE DOUGLAS GERLACH

JUDGE OF THE SUPERIOR COURT

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FILED: Exhibit Worksheet

All parties representing themselves must keep the Court updated with address changes.
A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.